

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

STATE OF NEBRASKA,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY; and GINA  
McCARTHY, Administrator, U.S. EPA,

Defendants.

Civil Action No. 4:14-cv-3006

**MEMORANDUM IN SUPPORT OF EPA’S MOTION TO DISMISS**

**INTRODUCTION AND SUMMARY**

Defendants United States Environmental Protection Agency and Gina McCarthy, Administrator, U.S. EPA (collectively “EPA”), pursuant to Rules 12(b)(1) and (b)(6) of the Federal Rules of Civil Procedure, hereby moves the Court to dismiss Plaintiff’s Complaint for lack of subject matter jurisdiction, or failure to state a claim upon which relief can be granted. Plaintiff State of Nebraska challenges a notice of *proposed* rulemaking in this case. The prematurity of Nebraska’s claim, as well as the unique jurisdictional provisions of the Clean Air Act, raise a host of jurisdictional and other dispositive defects in the Complaint. In the alternative, the Court may transfer this case the D.C. Circuit if it finds that the interests of justice so require. 28 U.S.C. § 1631.

Respectfully submitted,

ROBERT G. DREHER  
Acting Assistant Attorney General  
Environment and Natural Resources  
Division

Date: March 18, 2014

/s/ Jessica O'Donnell  
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**CERTIFICATE OF SERVICE**

I certify that on March 18, 2014, I caused a copy of the foregoing document to be filed through the Court's electronic filing system and thereby served on counsel through that system.

/s/ Jessica O'Donnell